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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 ROBIN B.,

9 Plaintiff,

Case No. C18-5630 RAJ

10 v.

11 COMMISSIONER OF SOCIAL SECURITY,

12 Defendant.

**ORDER AFFIRMING THE
COMMISSIONER'S DECISION
AND DISMISSING THE CASE
WITH PREJUDICE**

13 Plaintiff seeks review of the denial of her applications for Supplemental Security Income
14 and Disability Insurance Benefits. Plaintiff contends the ALJ erred by discounting several
15 medical opinions, her testimony, and her mother's lay witness statement. Dkt. 13. As discussed
16 below, the Court **AFFIRMS** the Commissioner's final decision and **DISMISSES** the case with
17 prejudice.

18 **BACKGROUND**

19 Plaintiff is currently 39 years old, has a bachelor's degree, and has worked as a nurse
20 assistant, mental retardation aide, and customer service representative. Dkt. 9, Administrative
21 Record (AR) 30. The parties agree that Plaintiff has not engaged in substance abuse since May
22 2013. AR 26; Dkt. 13 at 7. Plaintiff applied for benefits in May 2014. AR 132. She alleges

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1 disability as of August 2, 2012. AR 65. Plaintiff's applications were denied initially and on
2 reconsideration. AR 154, 155, 190, 191. After the ALJ conducted a hearing in November 2016,
3 the ALJ issued a decision finding Plaintiff not disabled. AR 60, 15-32.

4 **THE ALJ'S DECISION**

5 Utilizing the five-step disability evaluation process,¹ the ALJ found:

6 **Step one:** Plaintiff has not engaged in substantial gainful activity since the August 2012
7 alleged onset date.

8 **Step two:** Plaintiff has the following severe impairments: polysubstance dependence,
9 including methamphetamine, heroin, cocaine, benzodiazepines, opioids ("street
10 methadone," Dilaudid, morphine, Vicodin), and cannabis; alcohol/substance withdrawal
11 from various street drugs/substance induced mood disorders/psychosis/psychotic/
12 schizoaffective disorder/personality disorder/depression/anxiety/agoraphobia/panic
13 disorder/PTSD; tobacco dependence; degenerative disc disease of the cervical spine/feet
14 neuralgia.

15 **Step three:** These impairments, including the substance use disorders, meet the
16 requirements of listed impairments 12.06 (anxiety and obsessive-compulsive disorders)
17 and 12.08 (personality and impulse-control disorders).²

18 **Drug Addiction and Alcoholism (DAA) Analysis:** Because the ALJ found Plaintiff
19 disabled at step three and there was medical evidence of substance use disorders, the ALJ
20 then repeated the five-step process to determine whether the substance use disorders were
21 a contributing factor material to the determination of disability.

22 **Step two:** If Plaintiff stopped the substance use, the remaining impairments would
continue to be severe.

Step three: If Plaintiff stopped the substance use, the remaining impairments would not
meet or medically equal the requirements of a listed impairment.

Residual Functional Capacity: If Plaintiff stopped the substance use, she could
perform light work, lifting/carrying 20 pounds occasionally and 10 pounds frequently and
sitting and standing/walking 6 hours per day each. She could frequently stoop, kneel,
crouch, and crawl. She would be limited to uncomplicated or routine tasks, no greater
than reasoning level 2. She should have no public interaction and only occasional
coworker interaction with no tandem tasks, defined as more than one employee required

¹ 20 C.F.R. §§ 404.1520, 416.920.

² 20 C.F.R. Part 404, Subpart P, Appendix 1.

1 to complete the assigned duty. She could handle few workplace changes and simple
2 work-related decisions.

3 **Step four:** If Plaintiff stopped the substance use, she could not perform past relevant
4 work. However, her college education would provide direct entry into skilled work in the
5 national economy.

6 **Step five:** In the alternative, there are jobs that exist in significant numbers in the
7 national economy that Plaintiff could perform if she stopped the substance use.

8 The substance use disorder was a contributing factor material to the determination of
9 disability because Plaintiff would not be disabled if she stopped the substance use.
10 Accordingly, Plaintiff was not disabled within the meaning of the Social Security Act.

11 AR 18-32. The Appeals Council denied Plaintiff's request for review, making the ALJ's
12 decision the Commissioner's final decision. AR 1.³

13 DISCUSSION

14 This Court may set aside the Commissioner's denial of Social Security benefits only if
15 the ALJ's decision is based on legal error or not supported by substantial evidence in the record
16 as a whole. *Trevizo v. Berryhill*, 871 F.3d 664, 674 (9th Cir. 2017). Each of an ALJ's findings
17 must be supported by substantial evidence. *Reddick v. Chater*, 157 F.3d 715, 721 (9th Cir.
18 1998). "Substantial evidence" is more than a scintilla, less than a preponderance, and is such
19 relevant evidence as a reasonable mind might accept as adequate to support a conclusion.
20 *Richardson v. Perales*, 402 U.S. 389, 401 (1971); *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th
21 Cir. 1989). The ALJ is responsible for evaluating evidence, resolving conflicts in medical
22 testimony, and resolving any other ambiguities that might exist. *Andrews v. Shalala*, 53 F.3d
1035, 1039 (9th Cir. 1995). While the Court is required to examine the record as a whole, it may
neither reweigh the evidence nor substitute its judgment for that of the ALJ. *Thomas v.*
Barnhart, 278 F.3d 947, 954, 957 (9th Cir. 2002). When the evidence is susceptible to more

23 ³ The rest of the procedural history is not relevant to the outcome of the case and is thus omitted.
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1 than one interpretation, the ALJ's interpretation must be upheld if rational. *Burch v. Barnhart*,
2 400 F.3d 676, 680-81 (9th Cir. 2005). This Court "may not reverse an ALJ's decision on
3 account of an error that is harmless." *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012).

4 **A. Medical Opinions**

5 Plaintiff contends the ALJ erred by rejecting the opinions of examining doctors Loreli
6 Thompson, Ph.D., and Terilee Wingate, Ph.D., and non-examining state agency doctors Leslie
7 Postovoit, Ph.D., and Eugene Kester, M.D. Dkt. 13 at 3-5, 7.

8 An ALJ may only reject the contradicted opinion of an examining doctor by giving
9 "specific and legitimate" reasons. *Revels v. Berryhill*, 874 F.3d 648, 654 (9th Cir. 2017). The
10 ALJ can meet this standard by providing "a detailed and thorough summary of the facts and
11 conflicting clinical evidence, stating his interpretation thereof, and making findings." *Id.*
12 (citation omitted). "The ALJ must do more than offer his conclusions. He must set forth his
13 own interpretations and explain why they, rather than the doctors', are correct." *Reddick*, 157
14 F.3d at 725.

15 An ALJ "may reject the opinion of a non-examining physician by reference to specific
16 evidence in the medical record." *Sousa v. Callahan*, 143 F.3d 1240, 1244 (9th Cir. 1998) (citing
17 *Gomez v. Chater*, 74 F.3d 967, 972 (9th Cir. 1996)).

18 **1. Dr. Wingate**

19 Dr. Wingate examined Plaintiff in February 2011 and filled out a Psychological/
20 Psychiatric Evaluation form. AR 853-62. Dr. Wingate diagnosed PTSD, type II bipolar
21 disorder, polysubstance abuse in reported full remission, and personality disorder not otherwise
22 specified with cluster B traits. AR 854-55. Dr. Wingate opined that Plaintiff had marked
23 limitation in the ability to communicate and perform effectively in a work setting with public

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1 contact, and moderate limitation in the abilities to communicate and perform effectively with
2 limited public contact, learn new tasks, perform routine tasks without undue supervision, take
3 appropriate precautions for normal hazards, and maintain appropriate behavior in a work setting.
4 AR 855-56.

5 The ALJ gave Dr. Wingate's opinions "[l]ittle weight" because they relied on Plaintiff's
6 false self-reports that she had stopped abusing drugs in 2007, because Plaintiff's poor
7 performance on trail-making tests was inconsistent with having obtained a bachelor's degree and
8 performing successfully in graduate school, and because Dr. Wingate's examination and
9 opinions were completed one and a half years before Plaintiff's August 2012 alleged onset date.
10 AR 29.

11 Plaintiff argues that Dr. Wingate's opinions should be accepted despite being outside the
12 relevant period because they provide "historical perspective" on her impairments. Dkt. 13 at 4.
13 Dr. Wingate's report stated that Plaintiff had been "clean since 2007." AR 858. Plaintiff argues
14 that she was using no more than cannabis at the time of Dr. Wingate's examination, and thus Dr.
15 Wingate's opinions accurately reflect her functional capacity in the absence of drug use. Dkt. 13
16 at 3-4. In May 2010, Plaintiff reported using cocaine until 2007, opiates until 2008, and
17 methamphetamine until 2010. AR 867. Drug tests in May and October 2012 were positive for
18 opiates, amphetamines, and THC. AR 413-14, 434. In May 2012, Plaintiff told a provider that
19 she used marijuana and methamphetamine "on a daily basis...." AR 405. There is no dispute
20 that Plaintiff is disabled when engaged in substance abuse. AR 22; *see also* AR 428 (treating
21 doctor's "opinion that the patient's THC and amphetamine use are potentially exacerbating her
22 paranoia"). Given the admitted drug use through 2010 and again in 2012, the ALJ reasonably
23 inferred that Dr. Wingate's examination took place when Plaintiff had not achieved a stable

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1 sobriety. *See Batson v. Comm’r, Soc. Sec. Admin.*, 359 F.3d 1190, 1193 (9th Cir. 2004) (“[T]he
2 Commissioner’s findings are upheld if supported by inferences reasonably drawn from the
3 record.”). Dr. Wingate’s opinions thus offered little assistance in determining Plaintiff’s RFC in
4 the absence of substance use.

5 Plaintiff argues that her poor performance on the trail-making tests was not inconsistent
6 with her ability to attend college “years later.” Dkt. 15 at 3. Plaintiff was attending an online
7 graduate school at the time of the 2016 hearing, when there is no dispute that her substance abuse
8 had ceased. AR 71. The ALJ reasonably inferred that Plaintiff’s trail-making test performance
9 in the 10th percentile was inconsistent with her ability to participate successfully in a graduate
10 program, and thus Dr. Wingate’s report did not reflect Plaintiff’s abilities in the absence of
11 substance abuse. *See* AR 78 (Plaintiff received A’s in graduate classes).

12 The Court concludes the ALJ did not err by discounting Dr. Wingate’s opinions.

13 **2. Dr. Thompson**

14 Dr. Thompson examined Plaintiff in October 2014. AR 637. She diagnosed PTSD,
15 schizoaffective disorder, moderate opioid use disorder on maintenance therapy, and moderate
16 cannabinoid use disorder in reported remission. AR 641. Dr. Thompson opined that Plaintiff
17 had good reasoning ability, understanding, and concentration and persistence, while her memory
18 was “inconsistent” and her social functioning was “limited.” AR 642.

19 Plaintiff argues the ALJ erred by rejecting Dr. Thompson’s opinions. Dkt. 13 at 5. The
20 ALJ gave Dr. Thompson’s opinions “some weight,” finding that they “accurately represent[ed]”
21 Plaintiff’s functioning in the absence of substance abuse. AR 28. The ALJ accounted for Dr.
22 Thompson’s opinions into the RFC, accommodating memory impairments by limiting Plaintiff
23 to “uncomplicated or routine tasks, ... few workplace changes, and simple work-related

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1 decisions” and accommodating social impairments by allowing no public contact, only
2 occasional interaction with coworkers, and no tandem tasks. AR 24.

3 Plaintiff cites some of Dr. Thompson’s findings, for example that Plaintiff’s ability to
4 “adapt to routine changes in a typical work setting is likely to be impacted....” Dkt. 13 at 4
5 (quoting AR 642). Dr. Thompson was obviously aware of her own findings and considered them
6 in developing her ultimate opinions. She listed the quoted finding as support for her opinion that
7 “[s]ocial interaction and interpersonal relationships are limited.” AR 642. Accordingly, the ALJ
8 incorporated social and interpersonal limitations into the RFC. Plaintiff also cites Dr.
9 Thompson’s statement that her “former work activities” were impacted by impairments, but this
10 clearly relates to the time before stopping substance abuse because Plaintiff has not had a job
11 since then. Dkt. 13 at 4; AR 641. The other findings Plaintiff cites, such as variable reasoning
12 and inconsistent memory and judgment, similarly are adequately addressed by Dr. Thompson’s
13 opinions and the ALJ accounted for them in the RFC. Plaintiff fails to show any error in the
14 ALJ’s handling of Dr. Thompson’s opinions.

15 **3. Dr. Postovoit and Dr. Kester**

16 Dr. Postovoit reviewed Plaintiff’s records in November 2014. AR 139. She found that
17 Plaintiff had experienced “[o]ne or [t]wo” extended episodes of decompensation. AR 138. Dr.
18 Postovoit opined that Plaintiff was markedly limited in the ability to interact appropriately with
19 the public and moderately limited in the abilities to interact appropriately with supervisors and
20 coworkers. AR 141. She was moderately limited in the ability to respond appropriately to
21 changes in the work setting, complete a normal workday and workweek, maintain concentration
22 and attention for extended periods, and understand, remember, and carry out detailed
23 instructions. AR 140-41. In March 2015, Dr. Kester reviewed Plaintiff’s records and concurred
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1 in Dr. Postovoit's findings and opinions. AR 164, 167-69. Because the state agency determined
2 that Plaintiff was not disabled, no DAA analysis was performed. AR 144, 171.

3 The ALJ gave "[s]ome weight" to Dr. Postovoit's and Dr. Kester's opinions. AR 28.
4 The ALJ differed only in expressly concluding that "DAA was material to the determination of
5 disability," specifically that the marked limitation and the episodes of decompensation were due
6 to substance abuse. AR 28. Plaintiff argues that Dr. Postovoit's and Dr. Kester's opinions
7 reflect "a time when she was already clean and sober" because she had clean urinalysis results
8 between May 2013 and November 2016. Dkt. 13 at 7; Dkt. 15 at 5.

9 Plaintiff has not shown any harmful error. The ALJ incorporated the marked limitation
10 on public contact into the RFC by eliminating all public contact. AR 24. Substantial evidence
11 supports the ALJ's finding that any episodes of decompensation occurred during periods of
12 substance abuse. Plaintiff's drug use ended in May 2013 when she was pregnant with her son,
13 who was born in November 2013, and since then she has been caring for a young child, by all
14 accounts successfully. AR 447 (entered drug treatment when 5 months pregnant); AR 70.
15 Nothing in the record suggests any episode of decompensation since May 2013. Although Dr.
16 Postovoit and Dr. Kester did not expressly state when the episodes happened, the ALJ reasonably
17 inferred that the episodes occurred before Plaintiff stopped using drugs and therefore did not
18 reflect her capacity in the absence of substance abuse.

19 Plaintiff also points to Dr. Postovoit's opinion that Plaintiff's residual mental health
20 issues will result in "some distraction" and unsuitability for "very social" employment. Dkt. 15
21 at 5 (citing AR 138). But Dr. Postovoit did not consider this mild distractibility and unsociability
22 to rise to a disabling level. Moreover, the RFC contains strong limitations on complicated tasks
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1 and social interaction. AR 24. Plaintiff has not shown any error in the ALJ's treatment of this
2 portion of Dr. Postovoit's opinion.

3 The Court concludes the ALJ did not err in addressing the non-examining doctors'
4 opinions.

5 **4. "Other medical evidence"**

6 Plaintiff recites a selection of medical evidence but offers no argument demonstrating
7 that the ALJ's decision was based on legal error or unsupported by substantial evidence. Dkt. 13
8 at 5-7. The Court need not address this recitation further. *See Carmickle v. Comm'r, Soc. Sec.*
9 *Admin.*, 533 F.3d 1155, 1161 n. 2 (9th Cir. 2008) ("We do not address this finding because
10 Carmickle failed to argue this issue with any specificity in his briefing.").

11 **B. Plaintiff's Testimony**

12 Where, as here, an ALJ determines a claimant has presented objective medical evidence
13 establishing underlying impairments that could cause the symptoms alleged, and there is no
14 affirmative evidence of malingering, the ALJ can only discount the claimant's testimony as to
15 symptom severity by providing "specific, clear, and convincing" reasons that are supported by
16 substantial evidence. *Trevizo*, 871 F.3d at 678.

17 At the November 2016 hearing, Plaintiff testified that she does not "do very well
18 interacting with people," which causes anxiety and difficulty making herself leave the house.
19 AR 81; AR 97-98. Plaintiff "can have [panic attacks] once a day, or ... every couple days"
20 whether at home or out in public. AR 93, 94. She can sometimes "talk [her]self down from
21 them" or take medication. AR 93. She sometimes has difficulty concentrating on her graduate
22 course reading. AR 107. On bad days Plaintiff gets "panicky," anxious, emotional, cries up to
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1 four hours a day, and does not want to get out of bed, but she tries to “put on a good front” for
2 her child. AR 104.

3 The ALJ discounted Plaintiff’s testimony based on inconsistent statements and evidence
4 of functional improvement after ceasing drug use. AR 26-27. Although the first reason was
5 erroneous, evidence that Plaintiff’s impairments vastly improved after stopping drug use was a
6 sufficient reason to discount her testimony.

7 **1. Inconsistent Statements**

8 Inconsistencies in testimony can be a sufficient reason to discount a claimant’s testimony.
9 *Orn v. Astrue*, 495 F.3d 625, 636 (9th Cir. 2007). Here, however, the inconsistencies the ALJ
10 identified reflect a misunderstanding or mischaracterization of the record.

11 Plaintiff correctly notes that the ALJ misunderstood Plaintiff’s alleged sobriety date.
12 Dkt. 13 at 8-9. Plaintiff testified that she stopped using drugs in April of 2013 or 2012, that she
13 was pregnant at the time, and that her son did not suffer long-term effects from the drug use. AR
14 85. There is no dispute that Plaintiff’s son was born in November 2013, and thus Plaintiff’s
15 sobriety date was in 2013. AR 70.⁴ Plaintiff’s testimony is not, therefore, contradicted by
16 evidence of drug use in 2012. *See* AR 26.

17 The ALJ found that Plaintiff “changed her testimony” to acknowledge using cannabis
18 after her sobriety date, as recently as five months before the hearing. AR 26; AR 85-86. At the
19 2016 hearing, the ALJ asked when Plaintiff last used “street substances, including cannabis[,]”
20 which led to the discussion of Plaintiff’s sobriety date in “2013 or ’12.” AR 84-85. The ALJ
21 then sought to clarify that since the sobriety date “you haven’t used cannabis either?” and

22 ⁴ Plaintiff’s attorney stated that Plaintiff had been sober since 2012, which likely contributed to
23 the ALJ’s misunderstanding. *See* AR 65.

1 Plaintiff replied “Oh, I have used cannabis. I didn’t know you –....” AR 85. Plaintiff stated that
2 she had a prescription for cannabis, which presumably means she did not consider it a street
3 drug. AR 86. It was unreasonable for the ALJ to infer that this clarification reflected
4 “chang[ing] her testimony.” AR 26. *See Batson*, 359 F.3d at 1193.

5 The ALJ found that Plaintiff did not admit working as a dog sitter until “confronted” with
6 information from the record stating she had worked as a dog sitter. AR 26. This is simply not
7 accurate. When the ALJ asked Plaintiff if she had had “any employment since 2012?” Plaintiff
8 responded “No.” AR 80. The ALJ then asked, “You haven’t worked anywhere for cash since
9 2012?” and Plaintiff replied “Uh-uh – I was a dog sitter for two months, but that’s [it].” *Id.*
10 Plaintiff was not “confronted” with information from the record. She simply clarified her answer
11 once the ALJ made clear that he was referring to any cash payments at all, not just regular
12 employment.

13 The ALJ found that Plaintiff’s statement that she “does not go out unless accompanied by
14 her [boyfriend]” contradicted her admission that she drives herself to treatment appointments at
15 least twice weekly. AR 26. The Court cannot find anything in the record indicating Plaintiff
16 said she never goes out unaccompanied by her boyfriend. In her 2014 function report, Plaintiff
17 stated that her boyfriend “helps watch [their son] if I have to go somewhere.” AR 328. At the
18 2016 hearing, Plaintiff’s counsel asked her what “kind of activities” she did outside the house by
19 herself and Plaintiff replied, “I don’t have any activities outside the house, by myself.” AR 95-
20 96. Counsel clarified with an example, “What about grocery shopping?” and Plaintiff said she
21 usually goes with her boyfriend. AR 96. The ALJ then asked about treatment appointments, and
22 Plaintiff said she goes by herself. AR 96-97. Plaintiff never testified that she does not leave the
23 house without her boyfriend. Although clearly Plaintiff initially understood “activities” to mean

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1 something optional like hobbies or socializing, she readily acknowledged driving herself to
2 treatment appointments when the scope of “activities” was clarified. Clarification is not the
3 same as intentional inconsistency.

4 Another factor that the ALJ cited as “casting doubt on the reliability of the claimant’s
5 testimony” was that sometime before 2010 she “lost previous employment due to criminal
6 conviction for marijuana manufacture, rather than mere possession or usage, or for any other
7 medically determinable impairment....” AR 26; AR 874. This is not a reason to discount
8 Plaintiff’s testimony as to her remaining impairments and limitations after stopping substance
9 use in 2013. And the simple fact of a felony conviction is not a clear and convincing reason to
10 reject a claimant’s symptom testimony. *See Buck v. Astrue*, No. 3:10-cv-05519-KLS, 2011 WL
11 2600505, at *11 (W.D. Wash. June 28, 2011) (holding that “the mere fact that a claimant has
12 been incarcerated or has a criminal history” is not a clear and convincing reason to reject a
13 claimant’s symptom testimony).

14 The ALJ also faulted Plaintiff for giving “inconsistent effort” on a memory test. AR 26.
15 Plaintiff made a mistake in repeating back two digits backwards, but was then able to repeat
16 three and four digits backwards correctly. AR 639. She was also able to repeat back up to six
17 digits forward. *Id.* The ALJ interpreted this raw medical data as inconsistent effort. But the
18 medical professional who administered the test, Dr. Thompson, concluded not that Plaintiff’s
19 effort was inconsistent but that her “[m]emory functions are inconsistent.” AR 642. “[A]s a lay
20 person, an ALJ is ‘simply not qualified to interpret raw medical data in functional terms.’”
21 *Padilla v. Astrue*, 541 F. Supp. 2d 1102, 1106 (C.D. Cal. 2008) (quoting *Nguyen v. Chater*, 172
22 F.3d 31, 35 (1st Cir. 1999) (per curiam)); *see also Day v. Weinberger*, 522 F.2d 1154, 1156 (9th
23 Cir. 1975) (“the Hearing Examiner, who was not qualified as a medical expert, should not have

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1 gone outside the record to medical textbooks for the purpose of making his own exploration and
2 assessment as to claimant's physical condition."). And the ALJ provided no reason to supplant
3 Dr. Thompson's interpretation with his own. *See Reddick*, 157 F.3d at 725 ("The ALJ must do
4 more than offer his conclusions. He must set forth his own interpretations and explain why they,
5 rather than the doctors', are correct."). The ALJ's finding that Plaintiff gave inconsistent effort
6 on a memory test is unsupported by substantial evidence.

7 None of these supposed inconsistencies is supported by the record. The Court concludes
8 that inconsistent statements was not a clear and convincing reason to discount Plaintiff's
9 testimony.

10 **2. Improvement with Sobriety**

11 Evidence of medical improvement, however, undermined Plaintiff's allegations that she
12 remains disabled even in the absence of substance abuse. Plaintiff alleged that she has panic
13 attacks every couple of days, has difficulty focusing on reading for her graduate course work, has
14 difficulty interacting with people, and on bad days cries for several hours. Each of these
15 allegations is undermined by evidence in the record from after her sobriety date.

16 In contrast to her November 2016 hearing testimony that she has panic attacks every few
17 days, Plaintiff told a treatment provider in October 2016 that she only experienced "early"
18 symptoms of panic attacks about twice a month and was able to cope with them with skills she
19 had learned. AR 915.

20 In 2016 Plaintiff enrolled in an online graduate program and earned A grades in her first
21 two classes. AR 72, 78.⁵ Although Plaintiff testified at the November 2016 hearing that she

22 ⁵ The ALJ and the Commissioner are incorrect, however, in asserting that Plaintiff completed a
23 bachelor's degree after her 2013 sobriety date. Plaintiff graduated in 2001. AR 296.

1 sometimes has difficulty concentrating on her course reading, she was able to achieve top grades
2 in all classes she had taken by that time.

3 While Plaintiff continued to experience anxiety, the record shows that her mental health
4 conditions have largely been successfully treated. In April 2016, a treatment provider described
5 Plaintiff's recurrent major depressive disorder as "in remission" and Plaintiff felt "stable" on her
6 medications. AR 896. A March 2015 treatment note stated that gabapentin helped with anxiety.
7 AR 583. Risperdal has helped with "voices." AR 846. Although Plaintiff testified to difficulty
8 interacting with people, she is able to attend a methadone clinic twice a week, her son's health
9 appointments, and her own health appointments, all by herself or with her young son. While she
10 may feel like crying for hours on bad days, she is able to hold herself together for the sake of her
11 son. Plaintiff's 2014 Function Report states that "even when [she is] down [she has] to do stuff
12 anyway for [her] baby's sake." AR 328.

13 Objective medical evidence shows that Plaintiff's mental status improved after she
14 stopped substance abuse. In an October 2016 mental status examination, Plaintiff had normal
15 speech, thought content, reasoning, perception, judgment and insight, memory, fund of
16 knowledge, concentration and attention. AR 904. Anxious mood and affect were the only
17 abnormal findings. *Id.* In contrast, in an October 2012 treatment note, abnormalities were
18 documented in appearance, affect, mood, and insight. AR 430-31.

19 In short, Plaintiff has made enormous strides since recovering from substance abuse.
20 While other interpretations of the record may be possible, the ALJ's interpretation that Plaintiff's
21 testimony is contradicted by evidence of her mental and emotional competency is rational and
22 must be upheld. *See Burch*, 400 F.3d at 680-81. The Court concludes that evidence of strong
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1 improvement after ceasing drug use was a clear and convincing reason to discount Plaintiff's
2 testimony. The ALJ did not err by discounting Plaintiff's testimony.

3 **C. Lay Witness Statements**

4 Plaintiff's mother filled out a Function Report in 2014. AR 302-09. She reported that
5 Plaintiff's anxieties "slow her down" in getting places on time, and she has trouble keeping
6 appointments. AR 302, 306. Plaintiff has shopped excessively and overdrawn her bank account.
7 AR 305. She "used to be afraid to go out." AR 306.

8 An ALJ may discount lay witness testimony by giving a germane reason. *Diedrich v.*
9 *Berryhill*, 874 F.3d 634, 640 (9th Cir. 2017). The ALJ gave Plaintiff's mother's statement
10 "[s]ome weight" and found that the most severe impairments reported were based on the time
11 when Plaintiff abused substances while Plaintiff's current ability to care for a baby and a dog
12 reflected improvement since stopping substance abuse. AR 29. The ALJ's interpretation of this
13 lay witness statement is supported by substantial evidence. Plaintiff's mother repeatedly
14 observed that Plaintiff's medications helped and that Plaintiff had improved since having a child,
15 *i.e.*, in the time after stopping substance abuse. Plaintiff used to overdraw her bank account but
16 "is better since medication & the baby as motivator." AR 305. Plaintiff used to shop
17 excessively but the "medication has improved that." AR 305. Plaintiff can be argumentative
18 with authority figures but "is better w[ith] medication." AR 308. Plaintiff's mother's statement
19 that Plaintiff used to be able to hold a job but as her anxieties worsened she "always ended up"
20 losing any job clearly reflects the time before Plaintiff's sobriety date, because she has not held
21 or lost a job since then. AR 303; AR 18. Plaintiff's mother ended her report with the following:
22 "Since getting pregnant she has been motivated to get medications in balance and is a good
23 mother. Life still overwhelms her but the medications are helping." AR 309.

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1 In short, Plaintiff's mother's statement supports the ALJ's findings that Plaintiff, while
2 disabled when abusing drugs, improved vastly since stopping drug abuse. The ALJ did not err
3 by giving the statement "[s]ome weight" on this basis.

4 **CONCLUSION**

5 For the foregoing reasons, the Commissioner's final decision is **AFFIRMED** and this
6 case is **DISMISSED** with prejudice.

7 DATED this 29th day of May, 2019.

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10 The Honorable Richard A. Jones
11 United States District Judge
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